Paglinawan et al v. Frey et al Doc. 5 Att. 2

06-CV-00099-EXH

A-B

Dockets.Justia.com

JUDGE HOLWELL

06 CV 669

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHELE SNOW, Individually and on Behalf of All Others Similarly Situated Plaintiff, v. DOUBLEDAY, A DIVISION OF RANDOM HOUSE, INC.; BANTAM DOUBLEDAY DELL PUBLISHING GROUP; RANDOM HOUSE, INC.; ANCHOR BOOKS, A DIVISION OF RANDOM HOUSE, INC.; JAMES FREY Defendants.	Case No. CLASS ACTION COMPLAINT JURY TRIAL DEMANDED

2006 JAN 27 PM 3:35

INTRODUCTION

1. This action arises out of false and misleading advertising and promotion by Defendants of its purported "non-fiction" book, authored by James Frey, "*A Million Little Pieces* in an effort to stimulate it sales thereof. Plaintiff, on behalf of herself and all other similarly situated individuals, asserts violations of the New Jersey Consumer Fraud Act (NJSA 56:8-1, *et. seq.*) and a claim for unjust enrichment.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(a)(2), because complete diversity exists between the Plaintiff and each Defendant, and the amount in controversy exceeds $75,000.00. This action is not a collusive action designed to confer jurisdiction on a court of the United States that it would not otherwise have.

3. This Court has supplemental jurisdiction over the pendant state law claims

asserted herein pursuant to 28 U.S.C. § 1367(a) over all other claims where, as here, they are so related to claims in the action within the original jurisdiction of this Court that they form part of the same case or controversy under Article III of the United States Constitution.

4. Venue is proper in this District pursuant to 28 U.S.C. §1391 because Defendants conduct business in this District and substantially all of Defendants' wrongful conduct took place in this District. In addition, all but one foreign Defendant has a principal place of business here in this District.

THE PARTIES

5. Plaintiff, Michele Snow, is an individual who purchased the book *A Million Little Pieces* in reliance upon Defendants' false and deceptive advertising prior to January 27, 2006.

6. Defendant James ("Jim") Frey is an individual who authored the book *A Million Little Pieces*.

7. Defendant Doubleday, a division of Random House, Inc. is a corporation. At all relevant times hereto it acted or failed to act by and through its' officers, directors, employees, and/or representatives. It has its principal place of business located at 1540 Broadway, 21st Floor, New York, NY 10036-4094.

8. Defendant Bantam Doubleday Dell Publishing Group is a corporation. In 1988, Doubleday became part of Bantam Doubleday Dell Publishing Group. At all relevant times hereto it acted or failed to act by and through its' officers, directors, employees, and/or representatives. It has its principal place of business located at 1540 Broadway, 21st Floor, New York, NY 10036-4094.

9. Defendant Random House, Inc. is a corporation who was acquired by Doubleday in 1998. It is a parent corporation of Doubleday. Doubleday is now known as Doubleday, a Division of Random House, Inc. At all relevant times hereto it acted or failed to act by and through its' officers, directors, employees, and/or representatives. It has its principal place of business located at 1540 Broadway, 21st Floor, New York, NY 10036-4094.

10. Defendant Anchor Books is a corporation. It is known as Anchor Books, a Division of Random House, Inc. At all relevant times hereto it acted or failed to act by and through its' officers, directors, employees, and/or representatives. It has its principal place of business located at 1540 Broadway, 21st Floor, New York, NY 10036-4094.

FACTUAL BACKGROUND

11. "*A Million Little Pieces*" is a book that was written by Defendant Frey and published by all Defendants in 2003. The book was labeled by the Defendants as a non-fiction book. This label gives the reader the knowledge that the book is based upon true events, and not a fabricated story or plot.

12. In September 2005, "*A Million Little Pieces*" was chosen as a monthly selection by Oprah Winfrey for her world renowned Oprah Winfrey Book Club as the Book of the Month. More than two million copies were then sold.

13. As recently as January 8, 2006, there was a report by *The Smoking Gun*, an investigative Web site, that found multiple discrepancies between Defendant Frey's life and his account in the book. Among the site's findings were that Defendant Frey had spent only a few hours in jail, not nearly three months as he had written.

14. On January 11, 2006 Defendant Frey appeared on CNN's *Larry King*

Live and, while acknowledging that he had fabricated some parts of his account, defended its overall message. "I still stand by my book. I still stand by the fact that it's my story. It's a truthful retelling of the story," he said.

15. On January 26, 2006, Defendant Frey finally admitted on the nationally televised *Oprah Winfrey Show* that "I made a mistake," adding that he had developed a tough-guy image of himself as a "coping mechanism" to help address his alcohol and drug addiction.

16. Defendant Frey was confronted about his fabrications by Oprah Winfrey on her this January 26, 2006 nationally televised show. Eventually Defendant Frey admitted that in addition to exaggerating the amount of time he had spent in jail, he had lied about how his girlfriend had died; about the details of a foray outside a rehabilitation center; and about his claim that he had received a root canal without anesthesia because the center prohibited the use of Novocaine.

17. Defendant Frey even admitted that the reports from *The Smoking Gun* were accurate about the deception and lies in his alleged "non-fiction" book saying "I think most of what they [*The Smoking Gun*] wrote was pretty accurate, absolutely."

18. Even Defendants maintained the accuracy of the book despite the published reports of inaccuracies. Oprah Winfrey said that "her producers asked the publisher about the allegations, but that they were reassured the book was accurate."

19. In fact, Defendants publisher/representative Ms. Nan A. Talese admitted that "neither she nor anyone at Doubleday had investigated the accuracy of Mr. Frey's book." She explained that "the company first learned that parts of the book had been made up when The Smoking Gun published its report, nearly two years after the memoir

01/27/2006 12:55 BRODSKY & SMITH, LLC PAGE 09/14

was first published." "An author brings his book in and says that it is true, it is accurate, it is his own," Ms. Talese said. "I thought, as a publisher, this is James's memory of the hell he went through and I believed it."

20. Defendants issued a statement on January 26, 2006, upon the admissions of Defendant Frey, that "we bear responsibility for what we publish, and apologize to the reading public for any unintentional confusion surrounding the publication of "*A Million Little Pieces*." They further admitted that they were going to stop publishing the book as it was prior to the admissions of Defendant Frey and were going to include an author's note and a publisher's note in all future publications. Defendants are also sending this note to all booksellers for inclusion in previously shipped copies of the book to be included when the books are sold in the future.

21. Nevertheless, in advertising and publishing a book labeled "non-fiction," a label that categorizes a book for the consumer, Defendants have a duty to verify and corroborate the accuracy of the book's contents and ensure that when advertising such facts, the advertisements are in fact true. Defendants intentionally, recklessly and/or negligently failed to do so.

CLASS ACTION ALLEGATIONS

22. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and the following Class:

> All persons or entities in New Jersey who purchased the book *A million Little Pieces* from the date it was first published to January 26, 2007. Excluded from this Class are Defendants, its affiliates, employees, officers and directors, persons or entitles which published the book *A Million Little Pieces*, and the Court.

23. Plaintiff reserves the right to amend this Class definition if discovery and further investigation shows that the Class should be expanded or otherwise modified.

24. The members of the Class are so numerous that joinder of all members would be impracticable. Plaintiff estimates that there are hundreds of thousands of purchasers of the book.

25. There are questions of law and fact common to the members of the Class that predominate over any questions affecting only individual members, including:

(a) Whether Defendants' advertisements and marketing of the book through various media outlets, including print materials, television advertising, point of sale material and internet, were false and misleading;

(b) Whether Defendants made false and/or misleading statements of fact to the Class and the public concerning the truth or falsity of the book;

(c) Whether Defendants knew, or was reckless in not knowing, that the book was a fiction and not a non-fiction book and such statements about the book were false and/or misleading;

(d) Whether Defendants have been unjustly enriched by its conduct;

(e) Whether Defendants' false and/or misleading statements about the book were likely to deceive the public;

(f) Whether, by the misconduct set forth in this Complaint, Defendants have engaged in unfair, deceptive or unlawful business practices with respect to the advertising, marketing and sale of the book;

(g) Whether, by its conduct, Defendant violated the NJCFA; and

(h) Whether, as a result of Defendants' misconduct, Plaintiff and the Class are entitled to compensatory, statutory, treble and/or punitive damages, restitution, equitable relief and/or other damages and relief, and, if so, the amount and nature of such relief.

26. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff has no interests antagonistic to those of the Class and are subject to no unique defenses.

27. Plaintiff will fairly and adequately protect the interests of the Class and have retained attorneys experienced in class and complex litigation.

28. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for the following reasons:

(a) It is economically impractical for members of the Class to prosecute individual actions;

(b) The Class is readily definable;

(c) Prosecution as a class action will eliminate the possibility of repetitious litigation; and

(d) A class action will enable claims to be handled in an orderly and expeditious manner. A class action will save time and expense and will ensure uniformity of decisions.

29. Plaintiffs do not anticipate any difficulty in the management of this litigation.

FIRST CAUSE OF ACTION

Violations of New Jersey Consumer Fraud Act (NJSA 56:8-1, *et. seq.*)

30. Plaintiff Michele Snow re-alleges all of the above paragraphs as though they were more fully set forth herein at length.

31. Plaintiff brings this cause of action on behalf of herself and on behalf of the Class.

32. Defendant has engaged in unfair, unlawful, and fraudulent business practices as set forth above.

01/27/2006 12:55 6106679829 BRODSKY & SMITH, LLC PAGE 12/14

33. By engaging in the above-described acts and practices, Defendant has committed one or more acts of unfair competition within the meaning of the New Jersey Consumer Fraud Act.

34. Defendant's acts and practices have deceived and/or are likely to deceive members of the consuming public.

35. Defendant's acts and practices are unlawful because they violate the New Jersey Consumer Fraud Act.

36. Plaintiff, on behalf of herself and on behalf of the Class, seeks an order of this Court awarding restitution, disgorgement, and all other relief allowed under said statute, plus interest, attorneys' fees and costs.

SECOND CAUSE OF ACTION

Unjust Enrichment

37. Plaintiffs re-alleges all of the above allegations as though they were more fully set forth herein at length.

38. By its wrongful acts and omissions, Defendant was unjustly enriched at the expense of and to the detriment of Plaintiff and the Class. Plaintiff and the Class purchased the book that they would not have purchased but for the misrepresentations made by Defendant.

39. Plaintiff and the Class seek restitution from Defendant and seek an Order of this Court disgorging all profits, benefits, and other compensation obtained by Defendant from the sale of the book that would not have been received but for Defendant's conduct.

01/27/2006 12:55 6186479829 BRODSKY & SMITH, LLC PAGE 13/14

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves, all others similarly situated pray for judgment against Defendant granting the following relief:

A. An order certifying this case as a class action and appointing Plaintiffs and their counsel to represent the Class;

B. Restitution and disgorgement of all amounts obtained by Doubleday as a result of its misconduct, together with interest thereon from the date of payment, to the victims of such violations;

C. Compensatory, punitive and treble damages in an amount to be determined by the trier of fact and as permitted by law;

D. An order requiring Defendant to refund to Plaintiff and all members of the Class the funds paid for the falsely advertised book;

E. Reasonable attorneys' fees and the costs of prosecuting this action; and

F. Such other relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all causes of action so triable.

Dated: January 27, 2006

BRODSKY & SMITH, LLC

By: ______________________
Evan J. Smith, Esquire (ES3254)
240 Mineola Boulevard, First Floor
Mineola, NY 11501
516-741-4977
516-741-0626 (facsimile)

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JIMMY FLOYD, individually and on behalf of other persons similarly situated,

Plaintiff,

-against-

DOUBLEDAY a/k/a DOUBLEDAY & COMPANY, INC., a/k/a DOUBLEDAY, DIVISION OF RANDOM HOUSE INC., NAN A. TALESE/DOUBLEDAY, ANCHOR BOOKS, KNOPF PUBLISHING GROUP, INC., RANDOM HOUSE INC., NAN A. TALESE, JAMES FREY, KASSIE EVASHEVSKI and SEAN MCDONALD,

Defendants.

DOCKET No.: 06 CV 0693 (GEL)

AMENDED CLASS ACTION COMPLAINT

TRIAL BY JURY DEMANDED

FILED U.S. DISTRICT COURT 2006 JAN 31 PM 3:05 S.D. OF N.Y.

Plaintiff JIMMY FLOYD individually and on behalf of other persons similarly situated, by their attorneys, NAPOLI BERN RIPKA LLP, complaining of the defendants, respectfully alleges, as follows:

THE PARTIES

1. Plaintiff JIMMY FLOYD is a resident of the State of New York, County of New York, who purchased and read a copy of the book "A Million Little Pieces."

2. Defendant DOUBLEDAY PUBLISHING a/k/a DOUBLEDAY & COMPANY, INC., a/k/a DOUBLEDAY, DIVISION OF RANDOM HOUSE INC., ["DOUBLEDAY"] published the hardcopy edition of "A Million Little Pieces" in April 2003.

3. Defendant, DOUBLEDAY PUBLISHING a/k/a DOUBLEDAY & COMPANY, INC., a/k/a DOUBLEDAY, DIVISION OF RANDOM HOUSE INC., ["DOUBLEDAY"] is a domestic corporation.

4. Defendant DOUBLEDAY is a foreign corporation licensed to do business in the State of New York, and having a principal place of business in the State of New York.

5. Defendant DOUBLEDAY is a foreign corporation doing business in the State of New York and having a principal place of business in the State of New York.

6. Defendant NAN A. TALESE/DOUBLEDAY is the publisher of "A Million Little Pieces."

7. Defendant NAN A. TALESE/DOUBLEDAY is a domestic corporation.

8. Defendant NAN A. TALESE/DOUBLEDAY is a foreign corporation licensed to do business in the State of New York and having a principal place of business in the State of New York.

9. Defendant NAN A. TALESE/DOUBLEDAY is a foreign corporation doing business in the State of New York and having a principal place of business in the State of New York AT 1745 Broadway, 22nd Floor, New York, New York 10019.

10. Defendant ANCHOR BOOKS is a domestic corporation.

11. Defendant ANCHOR BOOKS is a foreign corporation licensed to do business in the State of New York and having a principal place of business in the State of New York.

12. Defendant ANCHOR BOOKS is a foreign corporation doing business in the State of New York and having a principal place of business in the State of New York.

13. Defendant KNOPF PUBLISHING GROUP, INC. published the paperback edition of "A Million Little Pieces" in September 2005.

14. Defendant KNOPF PUBLISHING GROUP, INC. is a domestic corporation.

15. Defendant KNOPF PUBLISHING GROUP, INC. is a foreign corporation licensed to do business in the State of New York and having a principal place of business in the State of New York.

16. Defendant KNOPF PUBLISHING GROUP, INC. is a foreign corporation doing business in the State of New York and having a principal place of business in the State of New York.

17. Defendant RANDOM HOUSE, INC. is a domestic corporation.

18. Defendant RANDOM HOUSE, INC. is a foreign corporation licensed to do business in the state of New York and having a principal place of business in the State of New York at 1745 Broadway, New York, NY 10019.

19. Defendant RANDOM HOUSE, INC. is a foreign corporation doing business in the State of New York and having a principal place of business in the State of New York at 1745 Broadway, New York, NY 10019.

20. Defendants DOUBLEDAY, NAN A. TALESE/DOUBLEDAY, ANCHOR BOOKS and THE KNOPF PUBLISHING GROUP are divisions of defendant RANDOM HOUSE, INC.

21. Defendants DOUBLEDAY, NAN A. TALESE/DOUBLEDAY, KNOPF PUBLISHING GROUP, INC., ANCHOR BOOKS and RANDOM HOUSE, INC., published, marketed and sold the book "A Million Little Pieces" that they portrayed to the public as a work of non-fiction.

22. Defendants DOUBLEDAY, NAN A. TALESE/DOUBLEDAY, KNOPF PUBLISHING GROUP, INC., ANCHOR BOOKS and RANDOM HOUSE, INC., marketed and sold millions of copies of the book "A Million Little Pieces" to millions of consumers who believed that they were purchasing a work of non-fiction.

23. Defendants DOUBLEDAY, NAN A. TALESE/DOUBLEDAY, KNOPF PUBLISHING GROUP, INC., ANCHOR BOOKS and RANDOM HOUSE, INC., continue to market and sell millions of copies of the book entitled "A Million Little Pieces," describing that book on their website as "Biography & Autobiography – Personal Memoirs" and further stating that "*A Million Little Pieces* is an ***uncommonly genuine account*** of a life destroyed and a life reconstructed."

24. Defendant James Frey is a resident of the City of New York and State of New York and is a the author of a book entitled "A Million Little Pieces," that was published, marketed and sold to the public as a work of non-fiction.

25. Defendant NAN A. TALESE (hereinafter "TALESE") is a Senior Vice President of Doubleday and the Publisher and Editorial Director of NAN A. TALESE/DOUBLEDAY, with an office located at 1745 Broadway, 22nd floor, New York, NY 10019.

26. Defendant KASSIE EVASHEVSKI, (hereinafter "EVASHEVSKI") is a literary agent affiliated with the Brillstein-Grey Agency in New York, New York. EVASHEVSKI was JAMES FREY's literary agent for the book "A Million Little Pieces."

27. Defendant SEAN McDONALD (hereinafter "McDONALD") is an editor who was, at times relevant to this complaint, affiliated Nan Talese/Doubleday Publishers, Inc. McDONALD edited the book "A Million Little Pieces."

JURISDICTION

28. This Court has original jurisdiction over this matter pursuant to pursuant to 28 U.S.C.A. §1332(d)(2).

BACKGROUND FACTS

29. Defendant JAMES FREY authored the book known as "A Million Little Pieces," (hereinafter referred to as "the Book").

30. Defendant JAMES FREY knew that substantial and material portions of the book "A Million Little Pieces" were untrue, and failed to advise the public or the other defendants of that fact between on or about April 2003 and on or about January 15, 2006.

31. Defendant JAMES FREY made numerous public appearances to promote the Book while portraying the Book as a work of truth, non-fiction and autobiography.

32. Among these public appearances was JAMES FREY's appearance on "THE OPRAH WINFREY SHOW" on October 26, 2005, at which time Oprah Winfrey named the Book as a selection of "OPRAH's BOOK CLUB."

33. During that appearance on "THE OPRAH WINFREY SHOW," defendant JAMES FREY was interviewed and described the Book as a work of non-fiction that accurately and truthfully portrayed numerous events in his own life.

34. In so doing, defendant JAMES FREY knew that millions of the viewers of "THE OPRAH WINFREY SHOW" would be induced to purchase the Book in the belief that it was a work of non-fiction that accurately and truthfully portrayed numerous events in his life.

35. Defendants DOUBLEDAY, NAN A. TALESE/DOUBLEDAY, ANCHOR BOOKS, KNOPF PUBLISHING GROUP, RANDOM HOUSE, INC. and TALESE knew that the designation of the Book as a selection of "OPRAH'S BOOK CLUB" would markedly – indeed – *geometrically* inflate the sales of the Book. Based on that knowledge and expectation, editions of the Book were printed, marketed and distributed with a trademark designation on the cover indicating that the Book had been chosen as an "OPRAH'S BOOK CLUB" selection.

36. Defendant JAMES FREY gave numerous interviews to the print and broadcast media to promote the Book while portraying the Book as a work of truth, non-fiction and autobiography.

37. Defendant JAMES FREY failed until on or about January 15, 2006 to advise the public or the print and broadcast media that the Book was, in fact, substantially fictionalized.

38. Defendant JAMES FREY hired defendant DOUBLEDAY to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sales of the Book.

39. Defendant JAMES FREY entered an agreement with defendant DOUBLEDAY regarding good and services provided in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sales of the Book.

40. Defendant DOUBLEDAY agreed to provided goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

41. On or about and between 2003 and until and including the present day, defendant DOUBLEDAY engaged in the for-profit business of creating, producing, editing, copying, printing, publishing, promoting, marketing, advertising, distributing and sale of literary works including fiction and non-fiction publications.

42. On or about and between April 2003 and until and including the present day, defendant DOUBLEDAY created, produced, edited, copied, printed, published, promoted, marketed, advertised, distributed and sold the Book.

43. On or about and between 2003 and until and including the present day, defendant, DOUBLEDAY, with the knowledge and consent of all other defendants herein, created, produced, edited, copied, printed, published, promoted, marketed, advertised, distributed and

sold The Book as *non-fiction*, and thus represented same to be a truthful and accurate description of actual events.

44. On or about and between 2003 and up to and including January 26, 2006, defendant DOUBLEDAY either knew or should have known that the Book was not a work of non-fiction as represented, and took no steps to advise the other defendants or the public of that fact.

45. Defendant JAMES FREY, hired defendant NAN A. TALESE/DOUBLEDAY, to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sales of the Book.

46. Defendant, JAMES FREY, entered an agreement with defendant NAN A. TALESE/DOUBLEDAY, regarding good and services provided in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sales of the Book.

47. Defendant NAN A. TALESE/DOUBLEDAY agreed to provided goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

48. On or about and between 2003 and until and including the present day, defendant NAN A. TALESE/DOUBLEDAY engaged in the for-profit business of creating, producing, editing, copying, printing, publishing, promoting, marketing, advertising, distributing and sale of literary works including fiction and non-fiction publications.

49. On or about and between April 2003 and until and including the present day, defendant NAN A. TALESE/DOUBLEDAY created, produced, edited, copied, printed, published, promoted, marketed, advertised, distributed and sold the Book.

50. On or about and between 2003 and until and including the present day, defendant NAN A. TALESE/DOUBLEDAY with the knowledge and consent of all other defendants herein, created, produced, edited, copied, printed, published, promoted, marketed, advertised, distributed and sold The Book as *non-fiction*, and thus represented same to be a truthful and accurate description of actual events.

51. On or about and between 2003 and up to and including January 26, 2006, defendant NAN A. TALESE/DOUBLEDAY either knew or should have known that the Book was not a work of non-fiction as represented, and took no steps to advise the other defendants or the public of that fact.

52. Defendant JAMES FREY hired defendant ANCHOR BOOKS to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sales of the Book.

53. Defendant, JAMES FREY entered an agreement with defendant ANCHOR BOOKS regarding good and services provided in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sales of the Book.

54. Defendant ANCHOR BOOKS agreed to provided goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

55. On or about and between 2003 and until and including the present day, defendant, ANCHOR BOOKS engaged in the for-profit business of creating, producing, editing, copying, printing, publishing, promoting, marketing, advertising, distributing and sale of literary works including fiction and non-fiction publications.

56. On or about and between April 2003 and until and including the present day, defendant ANCHOR BOOKS created, produced, edited, copied, printed, published, promoted, marketed, advertised, distributed and sold the Book.

57. On or about and between 2003 and until and including the present day, defendant ANCHOR BOOKS with the knowledge and consent of all other defendants herein, created, produced, edited, copied, printed, published, promoted, marketed, advertised, distributed and sold The Book as *non-fiction*, and thus represented same to be a truthful and accurate description of actual events.

58. On or about and between 2003 and up to and including January 26, 2006, defendant ANCHOR BOOKS either knew or should have known that the Book was not a work of non-fiction as represented, and took no steps to advise the other defendants or the public of that fact.

59. Defendant JAMES FREY hired defendant KNOPF PUBLISHING GROUP to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sales of the Book.

60. Defendant, JAMES FREY entered an agreement with defendant KNOPF PUBLISHING GROUP regarding good and services provided in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sales of the Book.

61. Defendant KNOPF PUBLISHING GROUP agreed to provided goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

62. On or about and between 2003 and until and including the present day, defendant, KNOPF PUBLISHING GROUP engaged in the for-profit business of creating, producing, editing,

copying, printing, publishing, promoting, marketing, advertising, distributing and sale of literary works including fiction and non-fiction publications.

63. On or about and between April 2003 and until and including the present day, defendant KNOPF PUBLISHING GROUP created, produced, edited, copied, printed, published, promoted, marketed, advertised, distributed and sold the Book.

64. On or about and between 2003 and until and including the present day, defendant KNOPF PUBLISHING GROUP with the knowledge and consent of all other defendants herein, created, produced, edited, copied, printed, published, promoted, marketed, advertised, distributed and sold The Book as *non-fiction*, and thus represented same to be a truthful and accurate description of actual events.

65. On or about and between 2003 and up to and including January 26, 2006, defendant KNOPF PUBLISHING GROUP either knew or should have known that the Book was not a work of non-fiction as represented, and took no steps to advise the other defendants or the public of that fact.

66. Defendant JAMES FREY hired defendant RANDOM HOUSE, INC., to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

67. Defendant JAMES FREY entered an agreement with defendant RANDOM HOUSE, INC. regarding good and services provided in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

68. Defendant RANDOM HOUSE, INC. agreed to provided goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

69. On or about and between 2003 and until and including the present day, defendant RANDOM HOUSE, INC. engaged in the for-profit business of creating, producing, editing, copying, printing, publishing, promoting, marketing, advertising, distributing and sale of literary works including fiction and non-fiction publications.

70. On or about and between 2003 and until and including the present day, defendant RANDOM HOUSE, INC. created, produced, edited, copied, printed, published, promoted, marketed, advertised, distributed and sold the Book.

71. On or about and between 2003 and until and including the present day, defendant RANDOM HOUSE, INC. with the knowledge and consent of all other defendants herein, created, produced, edited, copied, printed, published, promoted, marketed, advertised, distributed and sold The Book as *non-fiction*, and thus represented same to be a truthful and accurate description of actual events.

72. On or about and between 2003 and until on or about January 26, 2006, defendant RANDOM HOUSE, INC. either knew or should have known that the Book was not a work of non-fiction as represented, and took no steps to advise the other defendants or the public of that fact.

73. Defendant JAMES FREY hired defendant TALESE to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

74. Defendant JAMES FREY entered an agreement with defendant TALESE regarding good and services provided in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

75. Defendant TALESE agreed to provided goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

76. On or about and between 2003 and until and including the present day, defendant TALESE engaged in the for-profit business of creating, producing, editing, copying, printing, publishing, promoting, marketing, advertising, distributing and sale of literary works including fiction and non-fiction publications.

77. On or about and between 2003 and until and including the present day, defendant TALESE created, produced, edited, copied, printed, published, promoted, marketed, advertised, distributed and sold the Book.

78. On or about and between 2003 and until and including the present day, defendant TALESE with the knowledge and consent of all other defendants herein, created, produced, edited, copied, printed, published, promoted, marketed, advertised, distributed and sold The Book as *non-fiction,* and thus represented same to be a truthful and accurate description of actual events.

79. On or about and between 2003 and until on or about January 26, 2006, defendant TALESE either knew or should have known that the Book was not a work of non-fiction as represented, and took no steps to advise the other defendants or the public of that fact.

80. Defendant JAMES FREY hired defendant EVASHEVSKI to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

81. Defendant JAMES FREY entered an agreement with defendant EVASHEVSKI regarding good and services provided in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

82. Defendant EVASHEVSKI hired defendant DOUBLEDAY to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

83. Defendant EVASHEVSKI negotiated with defendant DOUBLEDAY on behalf of defendant FREY to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

84. Defendant EVASHEVSKI entered an agreement with defendant DOUBLEDAY regarding good and services provided in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

85. Defendant EVASHEVSKI hired defendant NAN A. TALESE/DOUBLEDAY to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

86. Defendant EVASHEVSKI negotiated with defendant NAN A. TALESE/DOUBLEDAY on behalf of defendant FREY to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

87. Defendant EVASHEVSKI entered an agreement with defendant NAN A. TALESE/DOUBLEDAY regarding good and services provided in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

88. Defendant EVASHEVSKI hired defendant ANCHOR BOOKS to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

89. Defendant EVASHEVSKI negotiated with defendant ANCHOR BOOKS on behalf of defendant FREY to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

90. Defendant EVASHEVSKI entered an agreement with defendant ANCHOR BOOKS regarding good and services provided in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

91. Defendant EVASHEVSKI hired defendant KNOPF PUBLISHING GROUP to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

92. Defendant EVASHEVSKI negotiated with defendant KNOPF PUBLISHING GROUP on behalf of defendant FREY to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

93. Defendant EVASHEVSKI entered an agreement with defendant KNOPF PUBLISHING GROUP regarding good and services provided in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

94. Defendant EVASHEVSKI hired defendant RANDOM HOUSE, INC. to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

95. Defendant EVASHEVSKI negotiated with defendant RANDOM HOUSE, INC. on behalf of defendant FREY to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

96. Defendant EVASHEVSKI entered an agreement with defendant RANDOM HOUSE, INC. regarding good and services provided in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

97. Defendant EVASHEVSKI hired defendant TALESE to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

98. Defendant EVASHEVSKI negotiated with defendant TALESE on behalf of defendant FREY to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

99. Defendant EVASHEVSKI entered an agreement with defendant TALESE regarding good and services provided in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising,

100. Defendant EVASHEVSKI agreed to provided goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

101. On or about and between 2003 and until and including the present day defendant EVASHEVSKI engaged in the for-profit business of creating, producing, editing, copying, printing, publishing, promoting, marketing, advertising, representation of , distributing and sale of literary works including fiction and non-fiction publications.

102. On or about and between 2003 and until and including the present day, defendant EVASHEVSKI created, produced, edited, copied, printed, published, promoted, marketed, advertised, distributed, represented and sold the Book.

103. On or about and between 2003 and until and including the present day, defendant EVASHEVSKI, with the knowledge and consent of all other defendants herein, created, produced, edited, copied, printed, published, promoted, marketed, advertised, distributed, represented and sold The Book as *non-fiction*, and thus represented same to be a truthful and accurate description of actual events.

104. On or about and between 2003 and until and including the present day, defendant EVASHEVSKI either knew or should have known that the Book was not a work of non-fiction as represented, and took no steps to advise the other defendants or the public of that fact.

105. Defendant JAMES FREY hired defendant MCDONALD to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

106. Defendant JAMES FREY entered an agreement with defendant MCDONALD regarding good and services provided in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

107. Defendant McDONALD contracted with, was employed by, or represented defendant DOUBLEDAY to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

108. Defendant McDONALD contracted with, was employed by, or represented defendant NAN A. TALESE/DOUBLEDAY to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

109. Defendant McDONALD contracted with, was employed by, or represented defendant ANCHOR BOOKS to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

110. Defendant McDONALD contracted with, was employed by, or represented defendant KNOPF PUBLISHING GROUP to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

111. Defendant McDONALD contracted with, was employed by, or represented defendant RANDOM HOUSE, INC. to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book

112. Defendant McDONALD contracted with, was employed by, or represented defendant TALESE to provide goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

113. Defendant McDONALD agreed to provided goods and services in connection with the creation, production, editing, copying, printing, publishing, promotion, marketing, advertising, distribution and sale of the Book.

114. On or about and between 2003 and until and including the present day, defendant McDONALD engaged in the for-profit business of creating, producing, editing, copying, printing, publishing, promoting, marketing, advertising, distributing and sale of literary works including fiction and non-fiction publications.

115. On or about and between 2003 and until and including the present day, defendant McDONALD created, produced, edited, copied, printed, published, promoted, marketed, advertised, distributed and sold the Book.

116. On or about and between 2003 and until and including the present day, defendant McDONALD with the knowledge and consent of all other defendants herein, created, produced, edited, copied, printed, published, promoted, marketed, advertised, distributed and sold The Book as *non-fiction*, and thus represented same to be a truthful and accurate description of actual events.

117. On or about and between 2003 and until and including the present day, defendant McDONALD either knew or should have known that the Book was not a work of non-fiction as represented, and took no steps to advise the other defendants or the public of that fact.

CLASS ACTION ALLEGATIONS

118. Plaintiff JIMMY FLOYD brings this action individually and on behalf of a class consisting of all persons who purchased and/or read the Book, pursuant to 28 U.S.C.A. §1332.

119. The class of persons who purchased the Book is so numerous that joinder of all members whether otherwise required or permitted, is impracticable. While the exact number of class members is unknown to plaintiff and his counsel at this time, and can only be ascertained through appropriate discovery, plaintiffs believe that the class members number in millions and possibly tens of millions.

120. Questions of law or fact common to the class predominate over any questions affecting only individual members of said class, as all persons who purchased the Book will all have the same causes of action, as set forth *infra*, to assert in connection with any claims for reimbursement and other consequential damages. The actions include, *inter alia*, negligence, negligent misrepresentation, gross negligence, fraud and fraud in the inducement. These common questions include:

- Whether each defendant engaged in the practices, acts and omissions complained of;
- Whether the practices, acts and omissions complained of constitute negligence, negligent misrepresentation, gross negligence, fraud and/or fraud in the inducement;
- The appropriate remedy therefore.

121. The claims of the representative party (parties) of the class are typical, if not identical, to the claims of the class.

122. The representative party (parties) will fairly and adequately protect the interests of the class by having same litigated in a competent and diligent manner.

123. A class action is superior to other available methods for the fair and efficient adjudication of the instant controversy. The class is geographically dispersed throughout the United States of America. The individual damages of any member of the class may be relatively small when considered against the potential costs of bringing this action, as purchasers and readers of the Book spent between $15.00 and $50.00 on their purchases and several hours reading the Book, and thus same would make the expense of this litigation unjustifiable for said class members in individual actions.

124. Plaintiffs do not anticipate any difficulty in the management of this action as a class action.

AS AND FOR THE FIRST CAUSE OF ACTION AS AGAINST ALL DEFENDANTS: NEGLIGENCE

125. Plaintiffs hereby repeat, reallege and reiterate each and every allegation set forth in the foregoing paragraphs of the complaint with the same force and effect as if more fully set forth at length herein

126. Defendants authored, edited, represented, offered, published, printed, advertised, labeled, described, marketed, promoted, distributed, sold and otherwise held out the Book as an autobiographical, non-fiction, personal memoir and thereby represented to the public at large that same was a truthful and accurate representation of actual events in the life of defendant JAMES FREY and others portrayed in the Book.

127. Defendants negligently failed to conduct a reasonable investigation or inquiry regarding the truthfulness or accuracy of the representations set forth in the Book before defendants edited, represented, offered, published, printed, advertised, labeled, described, marketed, promoted, distributed, sold and otherwise held out the Book as a work of non-fiction to their consumers and the public at large.

128. Defendants failed to conduct a reasonable investigation or inquiry regarding the truthfulness or accuracy of the representations set forth in the Book before defendants purposefully and willfully issued a press release wherein the defendants affirmatively categorized the book as "Brutally Honest," and before describing the Book on their website and in other forms of advertising and marketing as "an ***uncommonly genuine account*** of a life destroyed and a life reconstructed."

129. Defendants had a duty to conduct a reasonable investigation or inquiry regarding the truthfulness or accuracy of the representations set forth in the Book and, consequently, in their marketing and advertising and promotional efforts regarding the Book.

130. A substantial amount of the material facts set forth in the book are false and do not truthfully and accurately represent actual events.

131. Upon a reasonable investigation defendants herein would have discovered the falsity of many, if not all, of the false claims set forth in The Book.

132. Had plaintiffs known that The Book was, in fact, a work of fiction, they would not have purchased and /or read the Book.

133. As a result of the defendants' negligent failure to reasonably investigate the facts set forth in the Book, the plaintiffs have been damaged.

134. The resulting damage is in no way attributable to the conduct of the plaintiffs herein.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS HEREIN: NEGLIGENT MISREPRESENTATION

135. Plaintiffs hereby repeat, reallege and reiterate each and every allegation set forth in the foregoing paragraphs of the complaint with the same force and effect as if more fully set forth at length herein.

136. Defendants negligently misrepresented the Book as an autobiography, as non-fiction and as a personal memoir.

137. The plaintiffs herein purchased and/or read the Book based substantially on defendants' negligent misrepresentations.

138. As a result of the defendants' negligence the plaintiffs have been damaged.

139. The resulting damage is in no way attributable to the conduct of the plaintiffs herein.

AS AND FOR A THIRD CAUSE OF ACTION AS AGAINST ALL DEFENDANTS HEREIN: GROSS NEGLIGENCE

140. Plaintiffs hereby repeat, reallege and reiterate each and every allegation set forth in the foregoing paragraphs of the complaint with the same force and effect as if more fully set forth at length herein

141. Defendants were grossly negligent in that they failed to conduct ANY investigation or inquiry regarding the truthfulness or accuracy of the representations set forth in the Book before defendants edited, represented, offered, published, printed, advertised, labeled, described, marketed, promoted, distributed, sold and otherwise held out the Book as a work of non-fiction to their consumers and to the public at large.

142. Defendants were grossly negligent in that they failed to conduct any independent investigation or inquiry regarding the truthfulness or accuracy of the representations set forth in the Book before defendants purposefully and willfully issued a press release wherein the defendants affirmatively categorized the book as "Brutally Honest" and before describing the Book on their website and in other forms of advertising and marketing as "an ***uncommonly genuine account*** of a life destroyed and a life reconstructed."

143. At all times relevant hereto, defendants were or should have been aware that defendant JAMES FREY was not a reliable source of information.

144. At all times relevant hereto, defendants knew or should have known that defendant JAMES FREY was not a reliable source of information.

145. Defendants were grossly negligent in that they failed to make any effort whatsoever to confirm or disprove any of the material facts set forth in the Book.

146. Defendants edited, represented, offered, published, printed, advertised, labeled, described, marketed, promoted, distributed, sold and otherwise held out the Book as a work of non-fiction to their consumers and to the public at large.

147. The Book was not a work of *non-fiction* as it contained numerous material gross exaggerations, misrepresentations and fabrications.

148. A substantial amount of the material facts set forth in the book are false and do not truthfully and accurately represent actual events.

149. Upon the slightest investigation, defendants would have discovered the falsity of many, if not all, of the untruthful "facts" set forth in the Book.

150. Had plaintiffs known that the Book was, in fact, a work of fiction, they would not have purchased and/or read the Book

151. The defendants' gross negligence, recklessness and gross mistake, described in the foregoing paragraphs, has damaged plaintiffs and all others similarly situated.

152. The resulting damage is in no way attributable to the conduct of the plaintiffs herein.

AS AND FOR A FOURTH CAUSE OF ACTION AS AGAINST DEFENDANTS FREY, EVASHEVSKI AND MCDONALD: FRAUD

153. Plaintiffs hereby repeat, reallege and reiterate each and every allegation set forth in the *foregoing paragraphs of the complaint with the same force and effect as if fully set forth at* length herein.

154. Defendants FREY, EVASHEVSKI and McDONALD were or should have been aware that a substantial and material portion of the "facts" and events set forth in the Book were exaggerations, misrepresentations and fabrications. Therefore, defendants were aware that the Book was *FICTION*.

155. Defendants FREY, EVASHEVSKI and McDONALD had offered, represented and submitted the Book to publishers, including the other defendants, as a "novel" or "fiction."

156. Defendants FREY, EVASHEVSKI and McDONALD knowingly, willfully and purposefully represented to the parties herein and to the public at large that the Book was a work of non-fiction despite their knowledge that the work was substantially and materially a work of fiction.

157. Based on the defendants' fraudulent representations about the Book, plaintiff(s) and other persons similarly situated purchased the Book and/or spent substantial portions of time reading the book.

158. The plaintiff(s) herein, and all others similarly situated, reasonably relied on defendants' knowing and willful misrepresentations when they purchased the Book and spent hours of their time reading the Book.

159. Had plaintiff(s) and others similarly situated been aware that the Book was NOT a work of *non-fiction* they would not have purchased or read the Book.

160. As a result thereof plaintiff(s) have been damaged.

161. The resulting damage is in no way attributable to the conduct of the plaintiff(s) herein.

AS AND FOR A FIFTH CAUSE OF ACTION AS TO DEFENDANTS FREY, EVASHEVSKI AND MCDONALD: FRAUD IN THE INDUCEMENT

162. Plaintiffs hereby repeat, reallege and reiterate each and every allegation set forth in the foregoing paragraphs of the complaint with the same force and effect as if fully set forth at length herein.

163. Defendants FREY, EVASHEVSKI and McDONALD were or should have been aware that a substantial and material portion of the "facts" and events set forth in the Book were exaggerations, misrepresentations and fabrications. Therefore, defendants were aware that the Book was *FICTION*.

164. Defendants FREY, EVASHEVSKI and McDONALD had offered, represented and submitted the Book to publishers, including the other defendants, as a "novel" or "fiction."

165. Defendants FREY, EVASHEVSKI and McDONALD knowingly, willfully and purposefully represented to the parties herein and the public at large that the Book was a work of non-fiction for the express purpose of inducing the plaintiff(s) and others similarly situated to purchase the Book. Specifically, previous attempts to market, promote, publish, distribute or

otherwise sell the Book as a fictional work had failed and defendants FREY, EVASHEVSKI and McDONALD thereafter promoted, marketed, submitted, advertised, labeled, published, distributed or otherwise sold the Book as a *non-fictional* work.

166. Defendants FREY, EVASHEVSKI and McDONALD knowingly, willfully and purposefully represented to the parties herein and to the public at large that the Book was a work of non-fiction despite their knowledge that the work was substantially and materially a work of fiction for the express purpose of inducing the plaintiff(s) and persons similarly situated to purchase and read the Book.

167. Based on the defendants' fraudulent representations about the Book, plaintiff(s) and other persons similarly situated purchased the Book and/or spent substantial portions of time reading the book.

168. The plaintiff(s) herein, and all others similarly situated, reasonably relied on defendants' knowing and willful misrepresentations when they purchased the Book and spent hours of their time reading the Book.

169. Had plaintiff(s) and others similarly situated been aware that the Book was NOT a work of *non-fiction* they would not have purchased or read the Book.

170. As a result thereof plaintiff(s) have been damaged.

171. The resulting damage is in no way attributable to the conduct of the plaintiff(s) herein.

172. The plaintiff(s) herein, and all others similarly situated, reasonably relied on defendants' knowing and willful misrepresentations when they purchased the Book and spent hours of their time reading the Book.

173. Had plaintiff(s) and others similarly situated been aware that the Book was NOT a work of *non-fiction* they would not have purchased or read the Book.

174. As a result thereof plaintiff(s) have been damaged.

175. The resulting damage is in no way attributable to the conduct of the plaintiff(s) herein.

WHEREFORE, plaintiffs demand judgment on behalf of plaintiffs and all others similarly situated as against each of the defendants herein for damages and as against defendants, FREY, EVASHEVSKI and McDONALD, plaintiffs demand punitive damages; such damages should include but may not be limited to:

1. An order requiring a complete accounting of all sales of the book "A Million Little Pieces;
2. Appropriate damages to the plaintiff(s) for reimbursement of the purchase price of the Book;
3. Appropriate damages to the plaintiffs(s) for the expenditure of their time in reading the Book;
4. An injunction against further representation, marketing and advertisement of the book "A Million Little Pieces" as a work of autobiography, non-fiction or personal memoir;
5. Costs and expenses including attorneys' fees;
6. Such other and further relief as this Court deems appropriate.

Dated: New York, New York
January 30, 2006

NAPOLI BERN RIPKA LLP
Attorneys for the Plaintiffs

By: ______________________
ALAN S. RIPKA (AR1921)

115 Broadway, 12th Floor
New York, New York 10006
(212) 267-3700

JUDGE LYNCH

06 CV 0693

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No.:

Date of Purchase:

KAREN FUTERNICK, individually and on behalf of all others similarly situated,

-*against*-

DOUBLEDAY and RANDOM HOUSE INC.,
Defendants

VERIFIED COMPLAINT

TRIAL BY JURY DEMANDED

Plaintiff, KAREN FUTERNICK, individually and on behalf of all others similarly situated, by her attorneys, NAPOLI BERN RIPKA LLP, complaining of the defendants, respectfully allege, as follows:

1. Plaintiff, KAREN FUTERNICK, is a resident of the State of California.

2. Defendant, DOUBLEDAY, is a Corporation licensed to do business in the State of New York.

3. Defendant, RANDOM HOUSE, Inc., is corporation licensed to do business in the state of New York with its principal place of business in the County of New York.

4. On or about and between 2003 and until and including the present day, defendants herein engaged in the for-profit business of producing, copying, printing, publishing and distributing literary works including fiction and non-fiction works.

5. On or about and between 2003 and until and including the present day, defendants herein produced, copied, printed, published, distributed and sold the book known as "A Million Little Pieces" by James Frey, (hereinafter referred to as "The Book").

6. On or about and between 2003 and until and including the present day, defendants herein labeled The Book as *non-fiction*, and thus represented same to be a truthful and accurate statement of actual facts and occurrences.

7. The plaintiffs herein purchased The Book based substantially on the representation that it was non-fiction.

CLASS ACTION ALLEGATIONS

8. Plaintiffs bring this action as a class pursuant to 28 USCA 1332, individually and on behalf of all other persons who purchased The Book.

9. The class of persons who purchased The Book is so numerous that joinder of all members whether otherwise required or permitted, is impracticable. While the exact number of class members is unknown to plaintiffs at this time, and can only be ascertained through appropriate discovery, plaintiffs believe that the class members number in the hundreds of thousands and possibly in the millions.

10. That the questions of law or fact common to the class predominate over any questions affecting only individual members of said class, as all persons who purchased The Book will all have the same causes of action, as set forth *infra*, to assert in connection with any claims for reimbursement. The actions include negligence, negligent misrepresentation and gross negligence.

11. That the claims of the representative parties of the class are typical, if not identical, to the claims of the class.

12. That the representative parties will fairly and adequately protect the interests of the class by having same litigated in a competent and diligent manner.

13. That a class action is superior to other available methods for the fair and efficient adjudication of the instant controversy. The class is geographically dispersed throughout the United States of America. The individual damages of any member of the class may be relatively

small when considered against the potential costs of bringing this action, as purchasers and readers of The Book spent between $15.00 and $30.00, and thus same would make the expense of this litigation unjustifiable for said class members in individual actions.

14. Plaintiffs do not anticipate any difficulty in the management of this ation as a class action.

AS FOR THE FIRST CAUSE OF ACTION

15. Plaintiffs hereby repeat, reallege and reiterate each and every allegation set forth in the paragraphs of the complaint with the same force and effect as if more fully set forth at length herein

16. Defendants published, printed, advertised, distributed, sold and otherwise held out The Book as a non-fiction memoir and thereby represented to the public at large that same was a truthful and accurate representation of actual events.

17. Defendants negligently failed to conduct a reasonable investigation or inquiry regarding the truthfulness or accuracy of the representations set forth in The Book before defendants published, printed, advertised, distributed and otherwise held out the Book as non-fiction to their consumers and the public at large.

18. Defendants failed to conduct a reasonable investigation or inquiry regarding the truthfulness or accuracy of the representations set forth in the Book before defendants purposefully and willfully issued a press release wherein the defendants affirmatively categorized the book as "Brutally Honest".

19. A substantial amount of the material facts set forth in the book are false and do not truthfully and accurately represent actual events.

20. Upon a reasonable investigation defendants herein would have discovered the falsity of many, if not all, of the claims set forth in The Book.

21. Had plaintiffs known that The Book was in fact, FICTION, they would not have purchased and /or read The Book

22. As a result of the defendants negligence the plaintiffs have been damaged.

23. The resulting damage is in no way attributable to the conduct of the plaintiffs herein.

AS FOR THE SECOND CAUSE OF ACTION

24. Plaintiffs hereby repeat, reallege and reiterate each and every allegation set forth in the paragraphs of the complaint with the same force and effect as if more fully set forth at length herein

25. Defendants negligently misrepresented The Book as a non-fiction memoir.

26. The plaintiffs herein purchased and/or read The Book based substantially on defendants negligent misrepresentations.

27. As a result of the defendants negligence the plaintiffs have been damaged.

28. The resulting damage is in no way attributable to the conduct of the plaintiffs herein.

AS FOR THE THIRD CAUSE OF ACTION

29. Plaintiffs hereby repeat, reallege and reiterate each and every allegation set forth in the paragraphs of the complaint with the same force and effect as if more fully set forth at length herein

30. Defendants were grossly negligent in that they failed to conduct ANY investigation or inquiry whatsoever regarding the truthfulness or accuracy of the representations set forth in The

Book before defendants published, printed, advertised, distributed and otherwise held out The Book as non-fiction to their consumers and the public at large.

31. Defendants were grossly negligent in that they failed to conduct any independent investigation or inquiry regarding the truthfulness or accuracy of the representations set forth in the Book before defendants purposefully and willfully issued a press release wherein the defendants affirmatively categorized the book as "Brutally Honest".

32. The defendants gross negligence, recklessness and gross mistake, as aforementioned has damaged plaintiffs and all others similarly situated.

WHEREFORE, plaintiffs demand judgment on behalf of plaintiffs and all others similarly situated as against each of the defendants herein.

Dated: New York, New York
January 27, 2006

NAPOLI BERN RIPKA LLP

By: ______________ (92)
Attorneys for the Plaintiffs
115 Broadway
New York, New York 10006
212-267-3700

VERIFICATION

STATE OF NEW YORK)
)SS.:
COUNTY OF NEW YORK)

Alan S. Ripka, an attorney duly admitted to practice law in the Courts of this State, affirms the following under penalties of perjury:

I am the attorney for the plaintiffs in the above entitled-action. I have read the foregoing **SUMMONS AND VERIFIED COMPLAINT** and know the contents thereof, and upon information and belief, affiant believes after an inquiry reasonable under the circumstances the matters alleged herein to be true, and that the contentions herein are not frivolous, as that term is defined in Part 130.

The reason this verification is made by affiant and not by plaintiffs is that the plaintiffs herein reside in County other than the County in which we maintain our offices. The source of affiant's information and the grounds of her belief are communications, papers, reports and investigations contained in the file maintained by this office.

Dated: New York, New York
January 27, 2006

ALAN S. RIPKA